



David B. Cohen

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone
(617)-796-1120

Telefax
(617) 796-1142

TDD/TTY
(617) 796-1086

E-mail
mkruse@newtonma.gov

Public Hearing Date:	October 9, 2007
Land Use Action Date:	December 11, 2007
Board of Aldermen Action Date:	December 17, 2007
90-Day Expiration Date:	January 8, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner
Jean Fulkerson, Principal Planner

DATE: October 5, 2007

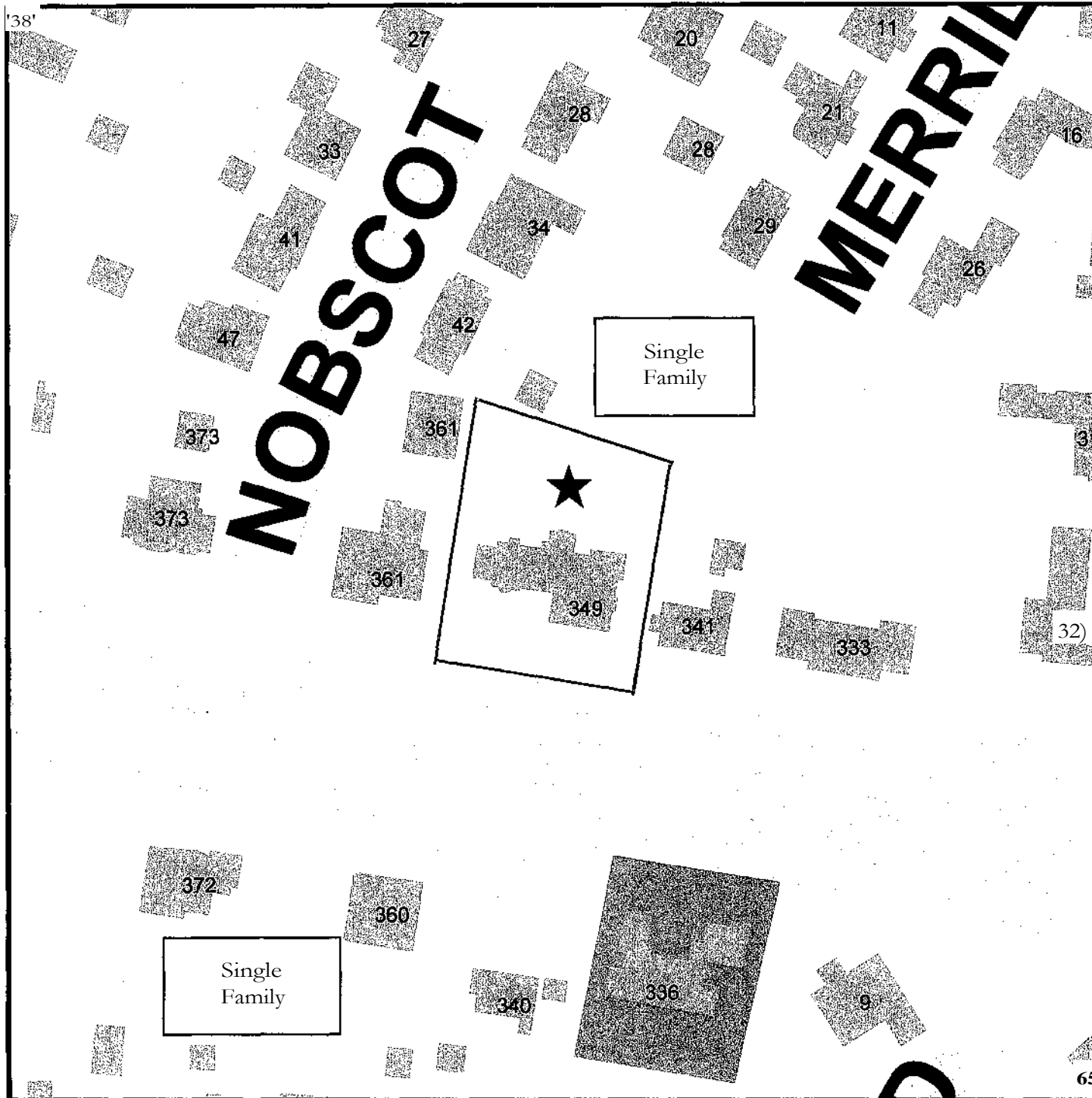
SUBJECT: #277-07 ETHAN LERNER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a private garage of more than 700 square feet at 349 COMMONWEALTH AVENUE, CHESTNUT HILL, Ward 7, on land known as Sec 61, Blk 9, Lot 8, containing approx 27,548 sq. ft. of a land in a district zoned SINGLE RESIDENCE 2.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

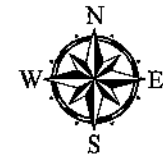
The petitioner is seeking a special permit to allow a garage exceeding 700 sq. ft. in size. The property is located in Newton Centre on a lot of 27,549 sq. ft. The dwelling itself is 7,708 sq. ft. and the proposed garage will be 1,012 sq. ft. Removing an internal wall leading to a storage room will enlarge the existing garage and a false garage door already in place on the façade of the storage room will be converted to an operable door.



Land Use
349 Commonwealth Ave
City of Newton

Legend

- House Numbers
- Single Family Residential
- Mi Multifamily Residential
- MI Commercial
- Industrial
- MI Mixed Use
- Ht Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- MI Public Housing
- Tax Exempt

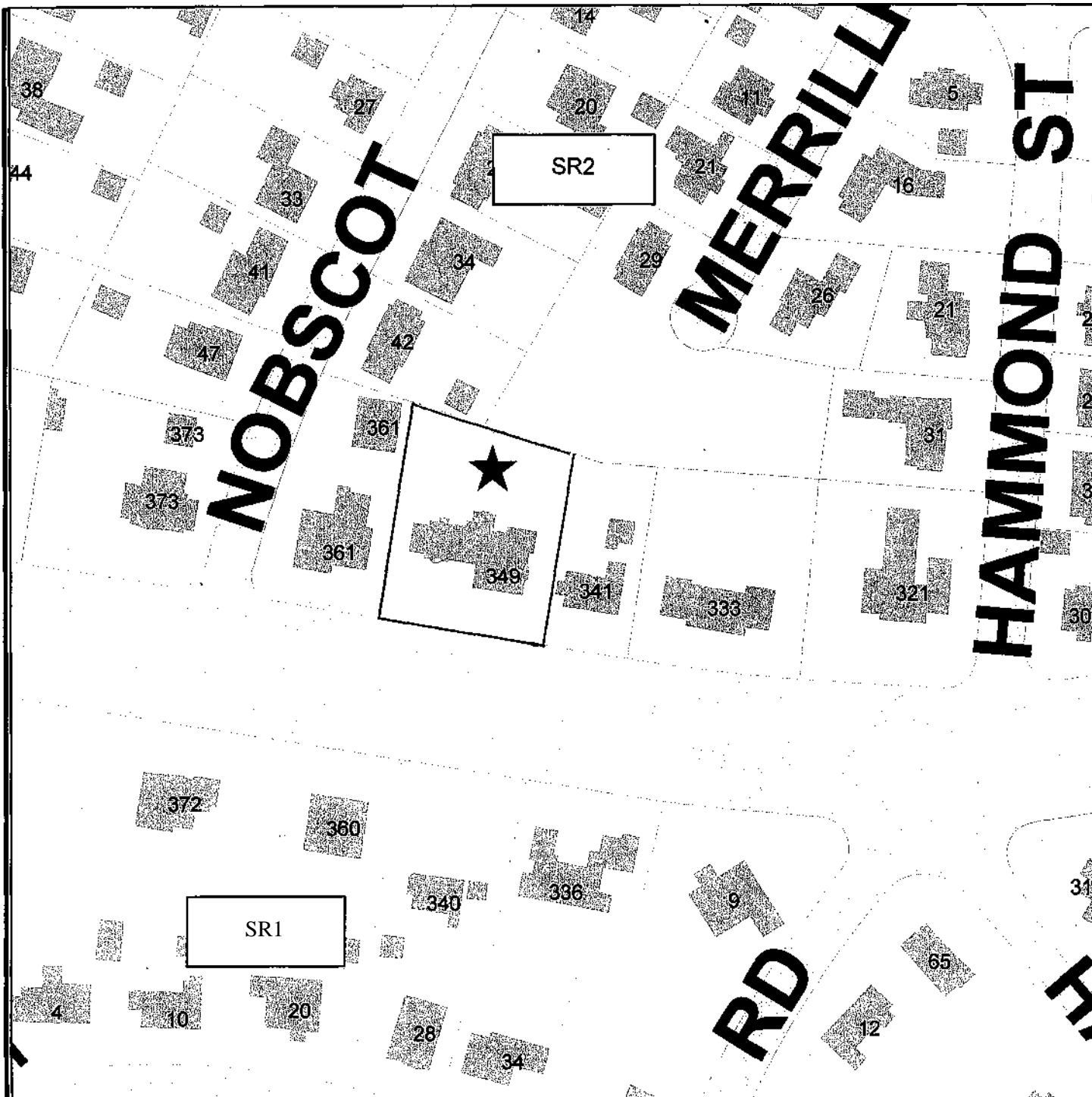


50 25 0 50 100
 Feet

The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee its accuracy or nor approve applications based solely on GIS data. Applicants for city permits must inquire of the relevant city department for applicable requirements.

City of Newton
 Mayor - David B. Cohen
 GIS Administrator - Douglas Greenfield

MAP DATE: September 21, 2007



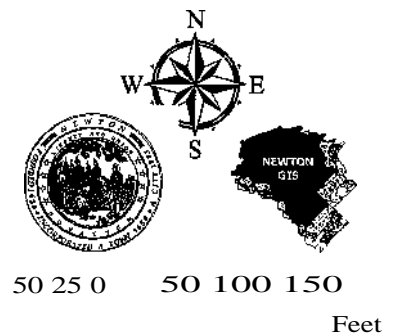
Zoning

349 Commonwealth Ave

City of Newton

Legend

- House Numbers
- Single Residence 1
- Single Residence 2
- Single Residence 3
- Business 1
- Business 2
- MI Business 4
- MI Business 5
- Limited Manufacturing
- Manufacturing
- Multi-Residence 1
- Multi-Residence 2
- MN Multi-Residence 3
- NI Multi-Residence 4
- Mixed Use 1
- MI Mixed Use 2
- NE OS/Rec.
- Public Use



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City of Newton
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ELEMENTS OF THE PETITION

The petitioner is requesting a special permit to allow a garage of 1,012 sq. ft, which requires approval by the Board of Alderman. The subject property is located on the Commonwealth Avenue carriage path in Newton Centre. In 2004, the petitioner began a major renovation of the dwelling, completing the work in 2006. A building permit (#113-05) was approved in July of 2004. During the renovation the petitioner completed a two bay, 700 sq. ft. garage with an adjoining storage/workshop area of 312 sq. ft. The storage area is faced with an inoperable garage door. In 2005, the petitioner met with the Planning Department to begin the special permit process to convert the storage area into a garage, but then chose not to file for a special permit, and to retain the permitted 700 sq. ft. garage and 312 sq. ft. storage area as is.

The petitioner is now requesting to remove the internal wall that divides the existing garage from the storage area, and to make the false garage door into an operable garage bay door. No other changes are proposed to the property.

II. ZONING RELIEF/APPROVALS

Based on the Chief Zoning Code Official's zoning review memorandum, dated June 10, 2007 (SEE ATTACHMENT "A"), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- ***Section 30-8(6)(7), for a private garage of more than 700 sq. ft.;***
- ***Section 30-23 for Site Plan Approval; and***
- ***Section 30-24 for Special Permit Approval.***

In his zoning review, the Chief Zoning Code Official (CZCO) noted that an internal lot line appeared on some documents and that the petitioner would need to document that the property is a single lot of record (*not two old lots with a possible internal lot line*). Subsequently, the petitioner provided additional deed information to the CZCO. *The CZCO confirmed that he is now satisfied that the subject property is a single lot without an internal lot line. (SEE ATTACHMENT "B")*

III. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board should consider whether the proposed excess in garage floor area would adversely affect the surrounding neighborhood

IV. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The lot at 349 Commonwealth Avenue is located in a Single Residence 2 District, in Ward 7. Construction was completed on the house in 2006. The dwelling is just over 7,700 sq. ft. on a lot of 27,549 sq. ft. Other large lots and large single-family dwellings abut the property.

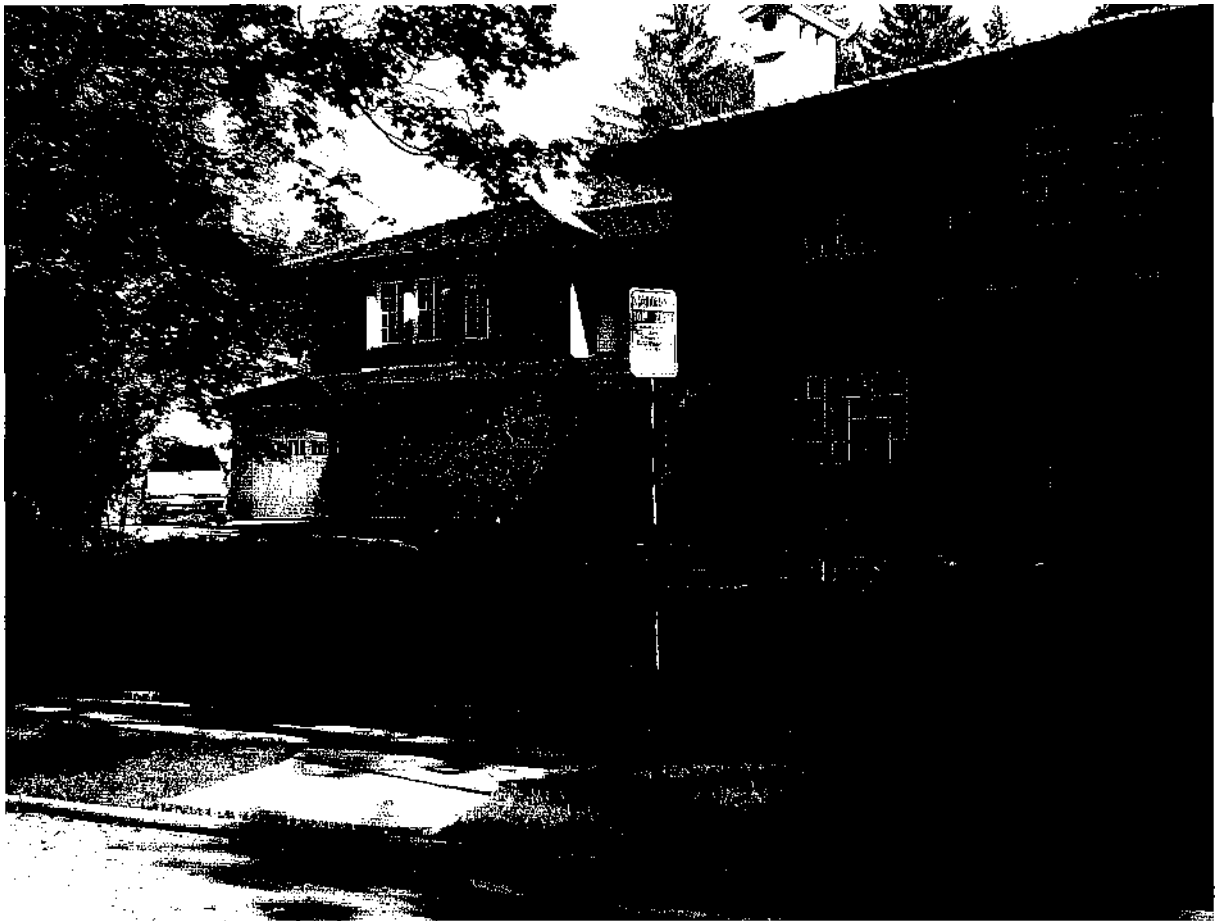


Figure 1. 349 Commonwealth Avenue with "false" garage bay at far left

B. Neighborhood

The subject site is located in Newton Centre, within a neighborhood of large single-family homes, zoned as Single Residence 2. The architecture of the area varies, but each property features a dwelling with a prominent street façade. In most cases, garages are located at the rear of the property.

VI. ANALYSIS

A. Technical Review

The following table illustrates how the as-built property compares to the dimensional and parking requirements of the Zoning Ordinance.

SR2 Pre-1953 Lots	Required	As-Built	Proposed
Min. Lot Size	10,000 sq. ft.	27,549 sq. ft.	N/C
Min. Frontage	80 ft.	150 ft.	N/C
Setbacks			
Front	25 ft.	39.6 ft.	N/C
Side	7.5 ft.	17.4 ft.	N/C
Rear	15 ft	73.4 ft	N/C
Max. Building Height	30 ft	25.7 ft.	N/C
Max Lot Coverage	30 %	19.1 %	N/C
Min. Open Space	50 %	68.7%	NC/
F.A.R.	.30	.28	N/C
Garage size	700 sq. ft. or less	700 sq. ft.	<i>1,012 sq. ft.</i>

As illustrated in the above table, the new dwelling meets all dimensional requirements of the City's Zoning Ordinance with the exception of the proposed garage size.

B. Relevant Site Plan Approval Criteria, Section 30-23

1. Consideration of site design, including the location and the relationship of the site's structures to nearby structures. The Structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

The petitioner's property is in a neighborhood of large single-family dwellings with imposing street facades. The design of the subject garage does not appear to be out of character with the neighborhood. Behind the petitioner at 29 Merrill Road is a lot of over 40,000 sq. ft. with a dwelling of 8,800 sq. ft. To the west of the petitioner at 361 Commonwealth Avenue is a lot of nearly 22,000 sq. ft. and a dwelling of 6,700 sq. ft. To the east is a lot at 341 Commonwealth Avenue of 12,800 sq. ft. with a dwelling of 3,200 sq. ft.

The area where the attached garage will be enlarged is already constructed and in use as storage. The change to the interior of the dwelling will not be visible to any abutter once the garage is enlarged. The dwelling itself is a large structure, and the garage represents about 13 percent of the total dwelling. This represents the same percentage as a structure of 3,000 with a 390 sq. ft. garage.

2. Screening of the structure from adjoining premises.

The property was extensively landscaped following the renovation of the property in 2006. Mature fir and spruce trees and ornamental and shade trees are located along Commonwealth Avenue. Between the garage and the abutting property at

361 Commonwealth Avenue are mature rhododendrons and holly shrubs. Planning Department staff do not believe that additional landscape screening is necessary.



Figure 2. Extensive Landscaping along Commonwealth Avenue



Figure 3. Landscaping abutting property at 361 Commonwealth Avenue

C. Relevant Special Permit Criteria, Section 30-24

1. Convenience and Safety of vehicular and pedestrian movement within the site.

The garage is located facing the street with a direct access driveway. A public sidewalk is installed along the front property line. The property is located with frontage on the Commonwealth Avenue Carriage Lane, which has very little vehicular traffic. The site design does not present any issues of vehicular and pedestrian safety.

2. The specific site is an appropriate location for such use/structure.

The subject lot is within a neighborhood of large single-family homes. The subject dwelling is of significant size and a garage of this size does not overwhelm either the structure or the surrounding neighborhood.

3. The use as developed and operated will not adversely affect the neighborhood

The oversized garage should not adversely affect the surrounding neighborhood. The site is well landscaped and the appearance of the exterior of the dwelling will remain unchanged.

VII. SUMMARY

The Planning Department has no concerns regarding the petitioner's request to enlarge the existing garage space, as proposed, beyond 700 sq. ft. The subject property was recently renovated and a high quality landscaping program installed. This change should not impact any abutter or the neighborhood.

ATTACHMENTS:

ATTACHMENT A: **Zoning Review Memorandum, dated June 10, 2007**

ATTACHMENT B: **Memo from Juris Alksnitis regarding merger of the two lots, dated August 31, 2007**

Zoning Review Memorandum

ATTACHMENT A

Dt: June 10, 2005

To: Ethan A. Lerner, owner

Fr: Juris Alksnitis, Chief Zoning Code Official


Cc: Michael Kruse, Director, Department of Planning and Development
Gerald Brown, Acting Commissioner of Inspectional Services**RE: Request for garage exceeding 700 sq. ft.****Applicant: Ethan Lerner****Site:** 349 Commonwealth Ave.**SBL:** Section 61, Block 09, Lot 08**Zoning:** SR-2**Lot Area:** 27,549 sq. ft. (per plan)**Current use:** Residence**Prop. use:** Addition with oversize gar.**Background:**

The petitioner wishes to construct a major addition to an existing single family dwelling. As part of the project, the applicant desires to build a single story one-bay garage immediately adjacent to a 2-bay garage incorporated into the 2-story main addition. The two-bay garage section will contain 700 sq. ft. and the one-bay garage section will have 312 sq. ft., totaling 1,012 sq. As the garage exceeds 700 sq. ft., a special permit from the Board of Aldermen is necessary.

Administrative determinations:

1. The Newton Zoning Ordinance sections 30-8(b)(7) and 30-15(m)(5) regulate construction of garages exceeding 700 sq. ft. As the applicant seeks to build a garage exceeding 700 sq., this necessitates a special permit from the Board of Aldermen.
2. The existing dwelling was originally constructed under permit #1926 dated March 2, 1916, which appears to treat the site as one lot. Nevertheless, deed information provided by the applicant indicates that the site may consist of two old lots raising the issue of a possible internal lot line. Although the submitted site plan titled "349 Commonwealth Avenue, Site Plan of Land located in Newton, Massachusetts, Middlesex Count", dated June 4, 2004, prepared by Meridian Associates, Inc. does not reflect an internal lot line, the owner explained that he was not able to locate a recorded plan indicating the lots had been merged. The owner should follow up with Meridian Associates to clarify this issue, and submit conclusive documentation that the two original lots shown on a 1914 subdivision plan and also in the City of *Newton Atlas 1929*, have been merged. Alternatively, the owner should take steps to record a plan, which removes the internal lot line and merges the lots.
3. The existing dwelling together with the proposed addition meet the density and dimensional requirements set forth in Sec 30-15, Table 1, *Density & Dimensional Controls in Residence Districts and for Residential Uses*, for lots created either before or after December 7, 1953, provided no internal lot line exists. If an internal lot line continues to exist, the proposed

addition, as well as existing conditions, create noncompliance with side-yard setbacks on both sides of the internal lot line. In the case of the existing building, such noncompliance would likely be deemed legal nonconforming provided the sunroom area predates the adoption of the Zoning Ordinance in 1922.

4. Section 30-19(d)(1) and (g) set out the applicable parking and driveway requirements. Sufficient in-door parking is being provided and the driveway design meets applicable dimensional requirements. However, should the applicant wish to park vehicles in the receiving court or driveway area, certain front setback and side yard restrictions apply. Only one vehicle may be parked so as to encroach within the front setback, and only one vehicle may be parked so as to encroach within the side setback.
5. The applicant states on plan and by letter that none of the proposed work will result in a change of grade more than 3 ft. As a result, Section 30-5(b)(4) requiring approval by the Board of Aldermen for a grade change exceeding 3 ft. does not apply.
6. See "Zoning Relief Summary" below.

Zoning Relief Summary		
Ordinance		Action Required
	Building	
	Note: See paragraphs 2 and 3, above re: lot line.	TBD*
30-8(b)(7)	A private garage of more than 700 sq. ft. <u>in area</u>	X
	Site	
	Note: See paragraphs 2 and 3, above re: lot line.	TBD*
30-23	Site plan approval.	X
	Parking	N/A
	N/A	
	Nonconformity	N/A
	Note: See paragraphs 2 and 3, above re: lot line.	TBD*
	Site	
30-24(d)	Approval of special permit for garage in excess of 700 sq. ft.	X

*TBD = to be determined

Plans reviewed:

- Plans titled "349 Commonwealth Ave. Site Plan of Land located in Newton, Massachusetts, Middlesex County", prepared by Meridian Associates, Inc., 98 High St., Danvers, MA 01923, stamped and signed June 7, 2005, by Richard E. Waitt, Jr., Registered Professional Engineer, consisting of the following:
 - Sheet 1 of 3, dated June 4, 2004
 - Sheet 2 of 3, dated June 4, 2004
 - Sheet 3 of 3, dated April 8, 2005
- Plan titled "349 Commonwealth Avenue, Newton Massachusetts, Landscape Site Plan", drawing L-1, dated March 25, 2005, prepared by Gregory Lombardi Design Incorporated, 2235 Massachusetts Avenue, Cambridge, MA 02140, unstamped and unsigned.

- Plans titled "Lerner Residence, Newton, MA" dated March 30, 2005, prepared by Morehouse Macdonald and Associates, Inc., 18 Muzzey St., Suite #1, Lexington, MA 02421, neither stamped nor signed, consisting of the following sheets:
 - Sheet A-101, First Floor Plan, rev. April 15, 2005
 - Sheets A-200, 201- Elevations
 - Supplemental memo dated June 6, 2005, re: Grade Plane and Height Calculation
- Excerpt of plan titled "Commonwealth Ave., Plan of Land in Newton Centre Belonging to the Newton Boulevard Syndicate", dated May 16, 1914, E. S. Smilie, Surv.

To: **Jean, jfulkerson@newtonma.gov**
Subject: **349 Commonwealth Ave.**
Date sent: **Fri, 31 Aug 2007 16:01:26**

Jean,

I have reviewed the information provided by the Engineering Dept., including copy of the 1914 survey plan, Assessors information, and copies of selected deeds. The above information indicates that the subject site, initially comprised of 2 lots on the 1914 plan, has been described by common metes and bounds in recorded legal documents over many years up to date.

The recorded deeds describing the property by common metes and bounds are the prevailing documents in this case. As a result, the initial lots have been merged and an internal lot line no longer exists.

Juris
CZCO

A handwritten signature in black ink, appearing to be 'Juris Alksnitis', written over the printed name.